

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES IN THE REGULATIONS  
OF THE WORKERS' COMPENSATION APPEALS COMMISSION

The Workers' Compensation Appeals Commission proposes to adopt regulation changes in Title 8 of the Alaska Administrative Code, dealing with procedures for appeals before the commission.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on September 3, 2010, concerning these proposed regulation revisions contained in Department of Law file number 1JU2010201518. This SUPPLEMENTAL NOTICE is being issued because the Workers' Compensation Appeals Commission has made additional proposed changes to the sections listed below and is extending the public comment period for these additional proposed changes to ensure that all interested parties have an opportunity to comment. Any person who has submitted written or oral comments under the first notice will not need to resubmit comments under this notice as those comments are part of the record and will be considered by the commission before its adoption of regulation changes.

- (1) 8 AAC 57.020. Parties to the appeal, is proposed to be repealed, readopted, and reworded to provide that all individuals or entities that were parties in proceedings that resulted in issuance of a final decision or order of the board are parties to an appeal; that if the director files an appeal, the director is the appellant; that if the director intervenes in an appeal, the director is an appellee; that a party may choose at any time not to participate in an appeal by filing a notice of nonparticipation; and that a legal representative of a deceased or incompetent individual may be substituted for that individual as a party to an appeal by filing a notice of substitution with copies of documentation of legal representation.
- (2) 8 AAC 57.030. Intervention and request for ruling by the director, is proposed to be repealed, readopted, and reworded to provide that the director may intervene in an appeal, or file an appeal if a party in interest to a compensation order is not represented by an attorney and the compensation order concerns an unsettled question of law; and requiring the other parties to serve the director upon intervention or the filing of an appeal.
- (3) 8 AAC 57.080. Panel to hear appeal, is proposed to be repealed, readopted, and reworded and to provide within seven (7) days of receipt of notice for any party to file a motion to remove and replace a member of the panel; and to provide for any member of the commission assigned to an appeal who is not the subject of the motion to decide the motion.
- (4) 8 AAC 57.090. Exemption from payment of filing fee and costs – determination of indigency, is proposed to be repealed, readopted, and reworded to provide for removal of a subsection that allowed the commission up to but not more than 60 days from the date an appeal is filed to determine a person's indigence; provide for removal of a subsection that provided for continuance, dismissal, or prohibition of participation in an appeal for failure to pay fees and costs; provide that within 10 days of service of a motion for an exemption for any party to file an opposition; provide for a subsection to allow the commission to order cross-appellants or intervenors, with or without a hearing, to share in payment of the costs of the preparation of the transcript on appeal; and provide for the commission to order payment of costs to the commission by the unsuccessful party to the extent necessary to reimburse the commission for the costs it paid.
- (5) 8 AAC 57.100. Application for stay of compensation order payments, is proposed to be repealed, readopted, and reworded to provide for the standards applicable to stays of lump sum payments and ongoing disability payments; provide that within 10 days of service of a motion for stay any other party may file an opposition; and provide for removal of the option allowing the commission to issue an order on an application for stay without a hearing.

- (6) 8 AAC 57.120. Transcript, is proposed to be repealed, readopted, and reworded to provide for the commission clerk within five days of receipt of the recordings of the board hearings to issue a written notice to the parties which recordings of board hearings have and have not been transcribed; provide for an appellant within five (5) days of receipt of the notice to file a designation of all portions of board hearings not previously transcribed that are essential to consideration of the issues on appeal; provide for any other party within 10 days of service of appellant's designation to file a designation of all portions of board hearings not previously transcribed and not designated by the appellant; provide for the appellant to coordinate with the commission clerk the selection of a transcriptionist and the preparation of transcripts of board hearings designated by the parties and not previously transcribed by the board; and provide for the materials the commission clerk is required to provide a transcriptionist for the preparation of a transcript.
- (7) 8 AAC 57.130. Briefing schedule, is proposed to be repealed, readopted, and reworded to provide for specific briefing deadlines and specific briefing deadlines in cross-appeals; provide for the filing of single briefs in cross-appeals; provide for the removal of the option to file separate briefs in cross appeals; provide for a party to file an original brief with three (3) copies; and provide for a party to file an original excerpt of record or supplemental excerpt of record with three (3) doubled-sided copies.
- (8) 8 AAC 57.150. Content and form of briefs and memoranda, is proposed to be repealed, readopted, and reworded to provide for a brief to include references to documents in a party's excerpt of record by page number; and provide for removal of the requirement to include references to the stamped page number of the record on appeal.
- (9) 8 AAC 57.160. Amicus brief, is proposed to be repealed, readopted, and reworded to provide for a non-party to file a motion to request permission to file an amicus brief identifying its interest in the appeal; provide that within 10 days of service of a motion any party may file an opposition to the motion; and provide for the chair to decide a motion under this section.
- (10) 8 AAC 57.170. Duty to prepare excerpt of record, is proposed to be repealed and readopted to provide for the simultaneous filing of excerpts of record or supplemental excerpts of record with briefs.
- (11) 8 AAC 57.180. Contents of excerpt of record, is proposed to be repealed, readopted, and reworded to provide for documents referenced in briefs to be included in the excerpts of record; provide for the removal of the requirement that documents in the excerpts of record must contain the stamped page number of the record on appeal; allow for the appellant or appellant/cross-appellee to file a supplemental excerpt of record with a reply brief; provide for the documents in any party's excerpts of record to be numbered consecutively and arranged in numerical order; and requiring that documents in a party's excerpt of record to be referenced in a table of contents that includes a brief description of each document, the date of the document, and the number of the first page of each document.
- (12) 8 AAC 57.200. Oral argument, is proposed to be repealed, readopted, and reworded to provide for any party to file a motion for oral argument stating the reasons oral argument is necessary; provide for not permitting oppositions to motions requesting oral argument; provide for the chair to decide a motion for oral argument; and provide for the removal of the subsection permitting the chair to request oral argument.
- (13) 8 AAC 57.250. Dismissal for failure to prosecute, is proposed to be repealed, readopted, and reworded to provide for 20 days from receipt of written notice for an appellant to take appropriate corrective action to comply with an order of the chair or commission; provide that if an appellant fails to take appropriate corrective action, the chair may issue an order to an appellant to show

good cause in writing why the appeal should not be dismissed; provide that the commission may dismiss an appeal, with or without a hearing, on the failure of the appellant to show good cause; provide that an appellant has 10 days from the date of service to file an opposition to a motion that an appeal be dismissed for failure to prosecute; and provide that on the filing of an unopposed or joint motion, or on a stipulation signed by the parties, the commission may issue an order dismissing an appeal on settlement on condition that any fees or costs owed to the commission are paid.

- (14) 8 AAC 57.990(5), (6), (10) and (11). Definitions, is proposed to be repealed to provide for the removal of the definitions of "person," "pro se," "document," and "financial interest."
- (15) 8 AAC 57.065. Representation of parties to an appeal, is proposed to be added as a new section that requires parties to be represented by attorneys if otherwise required by law; and within this new section, a subsection is proposed to be removed that allows for motions for permission for individuals or sole proprietorships to be represented by non-attorneys.

You may comment on the additional proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to:

Laurence Keyes, Chair  
Workers' Compensation Appeals Commission  
1016 West Sixth Avenue, Suite 405  
Anchorage, AK 99501

or by facsimile: (907) 269-6737 or by e-mail to [awcac.clerk@alaska.gov](mailto:awcac.clerk@alaska.gov).

The comments must be received no later than 5:00 p.m. on **December 8, 2010**.

If you are a person with a disability who needs a special accommodation to participate in this process, please contact the Barbara Ward (primary contact) at (907) 269-6738 or Kathleen Morrison (secondary contact) no later than November 29, 2010, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact the Clerk of the Commission at 1016 W. Sixth Ave., Rm 405, Anchorage, AK 99501, telephone (907) 269-6738, or e-mail [awcac.clerk@alaska.gov](mailto:awcac.clerk@alaska.gov) or go to [www.labor.alaska.gov/WCcomm/home.htm](http://www.labor.alaska.gov/WCcomm/home.htm).

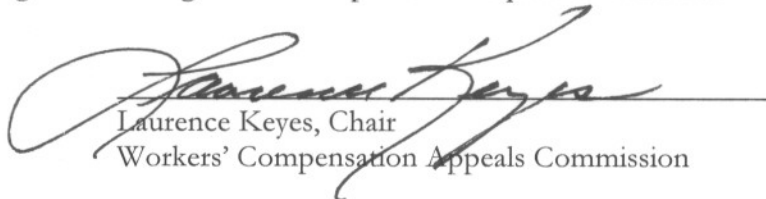
After the public comment period ends, the Appeals Commission will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

**Statutory Authority:** AS 23.30.008; AS 23.30.009; AS 23.30.127.

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 23.30.007; AS 23.30.008; AS 23.30.009; AS 23.30.125; AS 23.30.127; AS 23.30.128; AS 23.30.395

**Fiscal Information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: November 12, 2010

  
Laurence Keyes, Chair  
Workers' Compensation Appeals Commission